

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
AIKEN DIVISION

Kevin Wayne McDaniels, #254398,

C.A. No.: 1:12-6-TLW-SVH

Plaintiff,

vs.

Richland Co. Public Defenders Office;  
Richland Co. Solicitors Office;  
Honorable Judge Cooper; Richland Co.  
Sheriff's Dept.; Sgt. McDaniels; William  
Byars, Jr.; B.J. McKie; Monica Counts;  
Tim Riley; Greenville Co. Sheriff's  
Office; Mary Fields; Benjamin T. Stepp;  
AUSA A. Lance Crick; Honorable  
Henry F. Floyd; US Dept of Justice,  
Alcohol, Tobacco, Firearms &  
Explosives; Randal Beach; Eric Holder,  
Jr., U.S. Attorney General; Lexington  
Co. Sheriff's Dept.; Nikki Haley,  
Governor of South Carolina; Chris  
Florian; Alan Wilson; Kevin Owens;  
Barry Barnett; Robert B. Hall; Richard  
B. Ives; D.B. Drew; Terry O'Brien;  
Matthew Zagula; RT Lowry, MD; A.  
Bryant, PA; Neil Stephens, RN; J.  
Vazquez, MD; Edgar Morales; Walter  
Dobushak; Mr. Crawford, MD; Irwin  
Fish, MD; Dr. Massa, MD; Dr. Loranth,  
MD; Mrs. Brown, PA; Toumey Regional  
Medical Center; Palmetto Richland  
Memorial Hospital; Baptist Regional  
Medical Ctr; Chuck Wright; Tim Tucker;  
Detective Easler; Dr. Beinor; being sued  
in their individual and official capacity,

Defendants.

ORDER

This matter is now before the undersigned for review of the Report and Recommendation (“the Report”) filed by United States Magistrate Judge Shiva V. Hodges, to whom this case had previously been assigned pursuant to 28 U.S.C. § 636(b) and Local Rule 73.02(B)(2) (D.S.C.). In her Report, Magistrate Judge Hodges recommends that the following defendants be dismissed for failure to state a claim against them: Richland County Public Defenders Office; Richland County Solicitor’s Office; Honorable Judge Cooper; Richland County Sheriff’s Dept.; Richland County Sheriff’s Deputy Sgt. McDaniels; Director of SCDC William Byars, Jr.; Warden of Kirkland Correctional Institution B.J. McKie; SCDC State Classification Monica Counts; Warden of Tyger River Correctional Institution Tim Riley; Greenville County Sheriff’s Office; Greenville County Sheriff’s Office Detective Mary Fields; Federal Public Defender Benjamin T. Stepp; AUSA A. Lance Crick; Honorable Judge Henry F. Floyd; U.S. Dept. of Justice, ATF; ATF special agent Randal Beach; U.S. Attorney General Eric Holder; Lexington County Sheriff’s Dept.; S.C. Governor Nikki Haley; SCDC Deputy General Counsel Chris Florian; S.C. Attorney General Alan Wilson; attorney Kevin Owens; Spartanburg County Chief Solicitor Barry Barnett; attorney Robert Hall; Warden of USP McCreary Richard B. Ives; Warden of USP-Low Coleman D.B. Drew; Warden of USP Hazelton Terry O’Brien; Spartanburg County Sheriff Department Director Chuck Wright; Sheriff of Spartanburg County Tim Tucker; Spartanburg County Sheriff’s Department Detective Easler; Toumey Regional Medical Center; Palmetto Richland Memorial Hospital; Baptist Regional Medical Center; and Director of SCDC Health Services Dr. Beinor. (Doc. # 22).

The Report further recommends that the case be allowed to proceed based on the Bivens claims against the remaining defendants, as follows: Matthew Zagula, PA, R.T. Lowry, MD, A. Bryant, PA, and Neil Stephens, RN at USP McCreary; J. Vazquez, MD at USP-Coleman; Edgar Morales, MLP at USP-Low Coleman; Walter Dobushak at USP-Hazelton; Mr. Crawford, MD, PA,

Irwin Fish, MD, PA, Dr. Massa, MD, PA, Mrs. Brown, RN, Pharmacist, and Dr. Loranth at FCI Williamsburg. (Doc. # 22). The plaintiff has filed objections to the Report. (Doc. # 27).

In conducting this review, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections. . . . The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a de novo determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the Report and Recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case, the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F.Supp. 137, 138 (D.S.C. 1992) (citations omitted).

In light of this standard, the Court has reviewed, de novo, the Report and the objections thereto. The Court accepts the Report.

**THEREFORE, IT IS HEREBY ORDERED** that the Magistrate Judge's Report is **ACCEPTED** (Doc. # 22); plaintiff's objections are **OVERRULED** (Doc. # 27); and the following defendants are **DISMISSED** for failure to state a claim against them: Richland County Public Defenders Office; Richland County Solicitor's Office; Honorable Judge Cooper; Richland County Sheriff's Dept.; Richland County Sheriff's Deputy Sgt. McDaniels; Director of SCDC William Byars, Jr.; Warden of Kirkland Correctional Institution B.J. McKie; SCDC State Classification Monica Counts; Warden of Tyger River Correctional Institution Tim Riley; Greenville County Sheriff's Office; Greenville County Sheriff's Office Detective Mary Fields; Federal Public Defender Benjamin T. Stepp; AUSA A. Lance Crick; Honorable Judge Henry F. Floyd; U.S. Dept. of Justice,

ATF; ATF special agent Randal Beach; U.S. Attorney General Eric Holder; Lexington County Sheriff's Dept.; S.C. Governor Nikki Haley; SCDC Deputy General Counsel Chris Florian; S.C. Attorney General Alan Wilson; attorney Kevin Owens; Spartanburg County Chief Solicitor Barry Barnett; attorney Robert Hall; Warden of USP McCreary Richard B. Ives; Warden of USP-Low Coleman D.B. Drew; Warden of USP Hazelton Terry O'Brien; Spartanburg County Sheriff Department Director Chuck Wright; Sheriff of Spartanburg County Tim Tucker; Spartanburg County Sheriff's Department Detective Easler; Toumey Regional Medical Center; Palmetto Richland Memorial Hospital; Baptist Regional Medical Center; and Director of SCDC Health Services Dr. Beinor.

The case shall proceed based on the Bivens claims against the remaining defendants, as follows: Matthew Zagula, PA, R.T. Lowry, MD, A. Bryant, PA, and Neil Stephens, RN at USP McCreary; J. Vazquez, MD at USP-Coleman; Edgar Morales, MLP at USP-Low Coleman; Walter Dobushak at USP-Hazelton; Mr. Crawford, MD, PA, Irwin Fish, MD, PA, Dr. Massa, MD, PA, Mrs. Brown, RN, Pharmacist, and Dr. Loranth at FCI Williamsburg.

**IT IS SO ORDERED.**

s/ Terry L. Wooten

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**TERRY L. WOOTEN**

**UNITED STATES DISTRICT JUDGE**

May 2, 2012

Florence, South Carolina